

Date: July 3, 2012

To: Thomas J. Bonfield, City Manager
Through: Keith Chadwell, Deputy City Manager
From: Reginald J. Johnson, Interim Director
Department of Community Development
Subject: Uncancelled Deed of Trust – Former Rolling Hills Site

Executive Summary

As part of the real estate transfer of the former Rolling Hills site to McCormack Baron Salazar, Inc. (MBS) for the development of 132 multi-family rental units, staff from Community Development and General Services began the title research on the parcel that will be transferred to MBS. During the research, it was discovered that there is an uncancelled deed of trust from Southeast Durham Development Corporation (SEDDC) to NCM Development Group, Inc. (NCM) in the amount of \$91,062.57. Staff has met with NCM and both parties have mutually agreed to a payment of \$68,297.00 to satisfy the existing Deed of Trust.

Recommendation

The Department of Community Development recommends that City Council authorize the expenditure of \$68,297.00 to NCM Development Corporation to cancel the Deed of Trust dated August 24, 1995 recorded in Book 2112 at page 765, Durham County Registry.

Background

On June of 1999, City Council voted to affirm the City Manager's recommendation to initiate foreclosure proceedings against SEDDC, the basis being SEDDC's failure to perform in accordance with the terms of the loan agreement between the City and SEDDC dated August 24, 1995. In May of 2003, the City obtained the property through foreclosure. For the City to obtain clear title to all of the common areas, roads and the lots attached to the uncancelled Deed of Trust, payment needs to be made to NCM as their lien was in first or superior position at the time of foreclosure.

Issues/Analysis

In August of 1995, a Deed of Trust from SEDDC to NCM was recorded for \$165,000.00 in Book 2112 at page 765, Durham County Registry. The current balance on the loan associated with the Deed of Trust at the time of the foreclosure was \$91,062.57. For the City to be in the position to transfer the property to MBS as agreed upon in the Option Contract dated January 13, 2012, the outstanding balance must be paid so that the City will be in possession of a clear title to the property and therefore could transfer to MBS.

Alternatives

To move forward with the redevelopment of the former Rolling Hills site, the lien must be paid to allow the transfer of the property to MBS before construction can begin on the site. There are no other alternatives that would allow for construction to begin as scheduled.

Financial Impact

The existence of the uncanceled deed of trust was only recently discovered and therefore, the \$68,257.00 was not accounted for in the five-year funding plan presented to Council. The funds will be drawn from the Rolling Hills CIP and adjustments to the funding plan will be made once site preparation and infrastructure improvements for the Phase 1 rental project have been completed. That contract includes a \$500,000.00 contingency and potential savings associated with completing the work without using the entire contingency could offset this unanticipated expense.

SDBE Summary

The nature of this agenda item does not require compliance with the City of Durham's SDBE Ordinance.